

OCT 14 1968

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**In the
Supreme Court of the United States**

OCTOBER TERM, 1968

RODERICK JENKINS,

Appellant,

v.

JOHN JULIAN McKEITHEN, CECIL MORGAN,
PAUL M. HEBERT, FLOYD C. BOSWELL,
RALPH F. HOWE, A. R. JOHNSON, III,
AND BURT S. TURNER,

Appellees.

MOTION TO AFFIRM

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Attorneys for Appellees

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No. 548

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AND BURT S. TURNER,**

Appellees.

**On Appeal from United States District Court for the
Eastern District of Louisiana.**

MOTION TO AFFIRM

Appellees John Julian McKeithen, et al, respectfully move the Court, pursuant to Rule 16(1)(c) of the Rules of the Court, to affirm the judgment below and in support thereof would show that the questions on which the decision of this cause depends are so unsubstantial as not to need further argument.

CITATION TO OPINION BELOW

The judgment below and the opinion supporting it of June 26, 1968 are reported at 286 F. Supp. 537.

JURISDICTION

Jurisdiction of this appeal is founded upon 28

U.S.C. 1253, in that injunctive relief was sought by plaintiff against the enforcement of a statute of the State of Louisiana on the ground that it violates the Constitution of the United States and was denied by a Federal district court of three judges.

QUESTION PRESENTED

Do procedural rules of a commission, whose function is purely investigative and is without authority to adjudicate, violate due process in denying witnesses before it the right of confrontation, assistance of counsel and compulsory process for obtaining witnesses?

STATEMENT OF THE CASE

This action was commenced on March 11, 1968, challenging the constitutionality of Act 2 of the Extraordinary Session of the Legislature of Louisiana of 1967 (R.S. 23:880.1-880.18) which created a commission denominated as the "Labor-Management Commission of Inquiry" to investigate and find facts to violations or possible violations of the criminal laws of the State of Louisiana or of the United States arising out of or in connection with matters in the field of labor-management relations.

The plaintiff claims that he, though he has not been subpoenaed to appear before the Labor-Management Commission of Inquiry, had, as a result of hearings held by that Commission, been charged by the District Attorney of Iberville Parish, Louisiana, under four bills of information, with criminal conspiracy to commit a battery with a dangerous weapon on four

different persons in violation of a criminal statute of the State of Louisiana. He claims these charges are false and that he is not guilty. He alleges that these charges against him came about from improper actions of the Commission. Plaintiff does not attack the criminal statute under which he has been charged, but claims that the statute creating the Labor-Management Commission of Inquiry violates the due process clause of the Fourteenth Amendment in that, in investigations by the Commission, the persons being investigated are denied by the statute the right of confrontation, assistance of counsel and compulsory process for obtaining witnesses.

The U. S. District Court for the Eastern District of Louisiana, Baton Rouge Division, convened as a three judge court, and found that this Commission could only investigate and report and could not adjudicate, and then held that *Hannah v. Larche*, 363 U.S. 420, 80 S. Ct. 1502, 4 L. Ed. 2d 1307, was decisive on the issue raised by plaintiff. The Court observed that the Louisiana Legislature had drafted the rules of procedure for the Commission with that case in mind, and, accordingly, dismissed the plaintiff's suit.

Notice of Appeal was filed in the Supreme Court of Louisiana on July 2, 1968, and plaintiff's statement as to Jurisdiction was received September 20, 1968.

ARGUMENT

Statute Creating Commission to Investigate Possible Violations of Criminal Laws, Which Commission Was Merely a Fact-Finding Body and

Could Not Adjudicate, Was Not in Violation of the Due Process Clause of Fourteenth Amendment in Denying Confrontation, Assistance of Counsel and Compulsory Process for Obtaining Witnesses.

According to the preamble of the Act, this Commission of Inquiry was conceived and created to examine the causes for the unprecedented conditions existing in the State of Louisiana in the field of labor-management relations under which, by reason of suspected violations of the State and Federal criminal laws, there had been a shutdown of construction work involving industrial development projects furnishing employment to thousands of persons, that the then present conditions vitally affected the public interest and threatened to disrupt the conduct of normal labor-management relations. It was further stated that, in view of the then presently existing conditions, the public interest required that the causes thereof be investigated on a statewide basis as a supplement to assist activities of the district attorneys, grand juries and other law enforcement officials and agencies of the State of Louisiana and of the United States. The Commission was required to report to the Louisiana Legislature, the Governor, the Lieutenant-Governor and the Attorney General.

The statute granted limited power to the Commission, declaring "... it shall be investigatory and fact finding only...", and the statute provided that "The commission shall have no authority to and it shall make no binding adjudication...."

Inasmuch as the power of this commission was limited by the statute to investigating and reporting and the statute did not authorize the commission to adjudicate on matters affecting the life, liberty or property of the person under investigation, just as the statute which created the Civil Rights Commission before the Court in *Hannah v. Larche*, 363 U.S. 420, 80 S. Ct. 1502, 4 L. Ed. 2d 1307, and inasmuch as the rules of procedure for the investigations to be conducted by this commission were identical to those of the Civil Rights Commission, the issues in this case are identical with those in *Hannah*, where the statute was held constitutional, we submit that the questions on which this cause depends are so unsubstantial as not to need further argument.

The constitutionality of this same statute was challenged in the Louisiana Courts in the case of *Martone v. Morgan*, 251 La. 993, 207 So. 2d 770, wherein the plaintiff was represented by the same attorney who represents the plaintiff in this cause. The judgment of the Louisiana Supreme Court in that case is presently pending on appeal in this Court under Docket No. 216, October Term, 1968. The defendants there have filed a Motion to Affirm as here.

CONCLUSION

For the foregoing reasons, the judgment appealed should be affirmed.

Respectfully submitted,

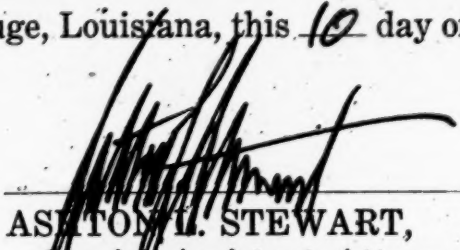
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PROOF OF SERVICE

I, Ashton L. Stewart, Special Attorney General of the State of Louisiana, attorney for appellees herein and a member of the bar of the Supreme Court of the United States, hereby certify that on the ~~10~~ day of October, 1968, I served a copy of the foregoing motion to affirm on the appellant herein, by mailing said copy in a duly addressed envelope with first class postage prepaid to his attorney of record, J. Minos Simon, Esquire, 1408 Pinhook Road, Post Office Box 52116, OCS, Lafayette, Louisiana 70501.

Baton Rouge, Louisiana, this ~~10~~ day of October, 1968.



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Attorney for Appellees